

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION**

In re:

**TAJAY RESTAURANTS, INC, *et al.*,
Debtors.**

)
)
) **Chapter 11**
)
) **Case No. 19-70067-TMD**
)
) **(Jointly Administered)**
)

**MOTION FOR ORDER DIRECTING IMMEDIATE PAYMENT OF ALLOWED
ADMINISTRATIVE EXPENSE OF 4424 BUFFALO GAP ROAD OWNER, LLC**

4424 Buffalo Gap Road Owner, LLC (the “Landlord”), through its undersigned counsel, hereby moves for the entry of an order, substantially in the form of the proposed order attached hereto (the “Proposed Order”) directing Debtor Tajay Restaurants, Inc. (“Tajay”) to pay Landlord’s previously allowed administrative expense claim within seven (7) days from entry. In support of this motion (the “Motion”), the Landlord respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief sought are sections §§ 105 and 503 of title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

4. On April 7, 2020, the Landlord filed a motion seeking the allowance of its administrative expense of Tajay’s bankruptcy case [ECF No. 354] (the “Allowance Motion”).¹

¹ The Landlord did not request an order directing the immediate payment of its administrative expense at that time as the Court had not yet set an administrative claims bar date.

The Court entered an order granting in part the Allowance Motion [ECF No. 414]. after a hearing held June 1, 2020,

5. After the Allowance Motion was filed, the Debtors requested [ECF No. 362] and obtained [ECF No. 371] an administrative claims bar-date in these chapter 11 cases. The administrative claims bar date was May 29, 2020. The Landlord was the only party to seek allowance of an administrative expense with respect to Tajay. The Debtors have resolved all timely-filed requests for administrative expenses, with the exception of the administrative expense asserted by JLou Properties, LLC against Debtor Yummy Holdings.

6. According to the monthly operating reports filed by the Debtors and orders allowing administrative expenses, each Debtor other than Yummy Seafoods, LLC, is clearly administratively solvent. The following chart summarizes the cash and administrative claims allowed or outstanding against each of the Debtors:²

Debtor	Cash on 7/1/2020	Pending and Allowed Administrative Claims
Tajay Restaurants, Inc.	\$98,990	• \$25,800—Allowed [ECF Nos. 354, 414]
Yummy Seafoods, LLC	\$156,438	• \$1,000,000—Pending [ECF No. 396] • \$10,480—Allowed [ECF Nos. 401, 446]
Yummy Holdings, LLC	\$41,170	• \$10,915—Allowed [ECF Nos. 390, 435] • \$3,110—Allowed [ECF Nos. 391, 436] • \$23,005—Allowed [ECF Nos. 392, 410]

7. On at least eight occasions from June 11 to July 21, 2020, the Landlord, through counsel, contacted Tajay to determine when it anticipated paying the Landlord's administrative expense. Tajay refused to respond, even to tell the Landlord that it could not provide an answer.

² All secured claims in the Debtors' chapter 11 cases were to be satisfied pursuant to the Sale Order [ECF No. 317]. *See Id.* at para 22. Additionally, Harney Partners has requested the allowance of certain professional fees [ECF No. 455] that are less than that amount of such professional's retainer.

Further, the pending administrative expense request of JLou, has been continued to September 22, 2020. In light this, the Landlord seeks relief from the Court.

RELIEF REQUESTED

8. The Landlord requests that the Court enter the Proposed Order, directing Tajay to pay the Landlord's administrative expense allowed pursuant to the Expense Order within seven (7) days from entry of the order, and grant such other relief to which the Landlord may be entitled.

BASIS FOR RELIEF

9. Although the timing of the payment of administrative expenses is within the discretion of the Court, compelling a immediate payment of administrative expense claims is appropriate prior to confirmation where there is no indication that the Debtor may be administratively insolvent. *See In re Four Star Pizza, Inc.*, 135 B.R. 498, 500 (Bankr. W.D. Pa. 1992); *cf., e.g., In re Korea Chosun Daily Times*, 337 B.R. 773, 785 (Bankr. E.D.N.Y. 2005) (holding administrative claimant entitled to immediate payment in totally solvent debtor); *Omni Partners, L.P. v. Pudgie's Dev., Inc. (In re Pudgie's Dev., Inc.)*, 239 B.R. 688, 693 (S.D.N.Y. 1999) (stating same in dicta). Courts in this District have identified three other factors that should be considered in exercising this discretion: "(1) the prejudice to the Debtors, (2) hardship to the claimant, and (3) potential detriment to other creditors." *In re UTEX Communs. Corp.*, 457 B.R. 549, 569 (Bankr. W.D. Tex. 2011).³

10. Tajay is administratively solvent, its assets have been liquidated, and the Landlord is and will be the only non-professional administrative claimant. Payment of the Landlord's

³ Additional factors courts in other districts have considered include (1) the status of the case, (2) the ability of the debtor to pay present claims, (3) the particular needs of the administrative claimants. 4 COLLIER ON BANKRUPTCY P 503.03 (16th 2020). The Landlord submits that these considerations are functionally incorporated in the factors listed by *In re UTEX Communs. Corp.*

administrative expense will not prejudice to Tajay or any of its creditors. The only effect of further delay will be to prejudice the Landlord.

CONCLUSION

WHEREFORE the Landlord respectfully requests that the Court enter an order substantially in the form of the Proposed Order directing Tajay to pay Landlord's previously allowed administrative expense claim within seven (7) days from entry.

Dated: July 28, 2020.

Respectfully submitted,

BARRON & NEWBURGER, P.C.

/s/R. J. Shannon

R. J. Shannon (TBA No. 24108062)

rshannon@bn-lawyers.com

7320 N. MoPac Expy, STE 400

Austin, TX 78731

Telephone: (512) 476-9103

Facsimile: (512) 279-0310

*Local Counsel for 4424 Buffalo Gap Road
Owner, LLC*

-and-

BEHAR, GUTT & GLAZER, P.A.

Brian S. Behar (SBN 727131)

Pro Hac Vice Pending

bsb@bgglaw.com

DCOTA, Suite A-350

1855 Griffin Road

Fort Lauderdale, Florida 33004

Telephone: (305) 931--3771

Facsimile: (305) 931-3774

*Counsel to Counsel for 4424 Buffalo Gap
Road Owner, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2020, I caused a true and correct copy of this Motion to be served on (i) all parties registered to receive ECF notification in the above captioned case and (ii) by first class U.S.P.S. mail or email on the parties on attached Master Service List.

/s/R. J. Shannon

R. J. Shannon

SERVICE LIST

Debtors:

Tajay Restaurants, Inc.
3304 Essex Drive
Richardson, TX 75082

Yummy Holdings, LLC
3304 Essex Drive
Richardson, TX 75082

Yummy Seafoods, LLC
3304 Essex Drive
Richardson, TX 75082

Counsel for Debtors:

Eric J. Taube
Mark Curtis Taylor
Waller Lansden Dortch & Davis, LLC
100 Congress Ave., Suite 1800
Austin, TX 78701
Eric.taube@wallerlaw.com
Mark.taylor@wallerlaw.com

Counsel for Committee:

Stephen A. Roberts
Clark Hill Strausburger
720 Brazos, Suite 700
Austin, Texas 78701
sroberts@clarkhill.com

United States Trustee:

United States Trustee
James Rose
james.rose@usdoj.gov

20 Largest Unsecured Creditors – Tajay:

DTMJ-1, LLC
Attn: David & Tara Montgomery
5134 Wright Terrace
Skokie, IL 60077

Janda Land Holdings, LLC
c/o Charles Greenough
McAfee & Taft
Two W. Second Street, Ste 1100
Tulsa, OK 74103

J & C Property Co.
13505 Montfort Place, Suite 200
Dallas, TX 75240

Boykin Enterprises
283 North Willis, Suite 1
Abilene, TX 79603

Department of Finance & Adm.
PO Box 3861
Little Rock, AR 72203

McLane Food Service, Inc.
PO Box 115055
Carrollton, TX 75011
OG&E Electric Services
PO Box 24990
Oklahoma City, OK 73124-0990

Comptroller of Public Accounts
PO Box 149348
Austin, TX 78714-9348

4424 Buffalo Gap Road Owner, LLC
Norman Steele
6000 Island Blvd., Apt. 2108
Aventura, FL 33160

Jan McCormick
3304 Fox Hollow Rd.
Duncan, OK 73533

Central Appraisal District of Taylor County
PO Box 1800
Abilene, TX 79604

Interface Security Systems LLC
8339 Solutions Center
Chicago, IL 60677

Nuco2 Inc.
PO Box 417902
Boston, MA 02241-7902

Center Point Energy
PO Box 4981
Houston, TX 77210-4981

Orkin, Inc.
PO Box 638898
Cincinnati, OH 45263-8898

Green Life Landscaping and General Services
PO Box 4019
Wichita Falls, TX 76308

AEP
PO Box 371496
Pittsburgh, PA 15250-7496

Oklahoma Tax Commission
PO Box 26930
Oklahoma City, OK 73126-0930

Sebastian Arizpe
1611 West Kentucky
Midland, TX 79701

The Wasserstrom Company
PO Box 182056
Columbus, OH 43218-2056

MasterScapes, Inc.
330 Bacacita Farms Rd.
Abilene, TX 79602

20 Largest Unsecured Creditors—YS:

Long John Silver's Inc. YRSG
PO Box 950111
Louisville, KY 40295

Economy Square, Inc.
210 Park Ave., Suite 2175
Oklahoma City, OK 73102

McLane Food Service, Inc.
2085 Midway Rd.
Carrollton, TX 75006-5063

Burris Valley Ranch, Inc.
7300 N. Comanche
Oklahoma City, OK 73132

Mittal & Sons, LLC
123 Blue Hill Rd.
San Antonio, TX 78229

Joseph Beylouni
9174 Rebecca Avenue
San Diego, CA 92123

Hot Schedules
Attn: Tina Harve
3440 Preston Ridge Road, Suite 650
Alpharetta, GA 30005

John C. Mills
3122 Madison Ct.
Stillwater, OK 74074

Oklahoma State Dept. of Health
PO Box 268815
Oklahoma City, OK 73126-8815

City of Stillwater Utility Service
PO Box 1449
Stillwater, OK 74076-1449

OG&E
PO Box 24990
Oklahoma City, OK 73124-0990

Janda Land Holdings, LLC
c/o Charles Greenough
McAfee & Taft
Two W. Second Street, Ste 1100
Tulsa, OK 74103

HBIC LLC
1940 E. Walnut Street
Pasadena, CA 91107

NADG NNN LJS-A W OK LP
3131 McKinney Ave. Ste L-10
Dallas, TX 75204

20 Largest Unsecured Creditors—YH:

DTMJ-1, LLC
Attn: David & Tara Montgomery
5134 Wright Terrace
Skokie, IL 60077

Dennis Semler Tulsa City Trs
500 S. Denver Ave.
3rd Floor
Tulsa, OK 74103-3840

Lane Dworkin Properties, LLC
415 Park Avenue
Rochester, NY 14607

Real Estate Acquisitions
KJE LLC
2192 Windemere CT
Morgan Hill, CA 95037-9375

Janda Land Holdings, LLC
c/o Charles Greenough
McAfee & Taft
Two W. Second Street, Ste 1100
Tulsa, OK 74103

August, August and Lane of Rochester LLC
72 Canfield Rd.
Pittsford, NY 14534

Seven Cousins of Rochester LLC
c/o Andrew August
Park Avenue Bike Shop
72 Canfield Rd.
Pittsford, NY 14534

Billie M. Mills
3009 Arapaho Road
Commerce, TX 75428

Bowker Land Development, LLC
2415 N. 14th St.
Ponca City, OK 74601

City of Lubbock
PO Box 2000
Lubbock, TX 79457

STE Ventures, LLC
Attn: Steven T. Tsang
20028 SE 3rd Circle
Camas, WA 98607

AA&L II LLC
72 Canfield Rd.
Pittsford, NY 14534

Wolter Properties, LLC
1553 Summit Shores Vista
Bursville, MN 55306

Muskogee County Treasurer
Kelly M. Garret
PO Box 1587
Muskogee, OK 74402

A Cut Above
PO Box 1417
Sand Springs, OK 74063

AEP Public Service Co. of Oklahoma
PO Box 24421
Canton, OH 44701-4421

NuCo2
PO Box 417902
Boston, MA 02241-7902

Carolyn Kriegsman Trust
1634 South Boston Ave.
Tulsa, OK 74119-4416

McLane Foodservice, Inc.
2085 Midway Road
Carrollton, TX 75006

Mullin Plumbing, Inc.
118 S. Elm Place
Broken Arrow, OK 74012

Parties Requesting Notice

Kristopher E. Koepsel
A. Grant Schwabe, OBA
Riggs, Abney, Neal, Turpen,
Orbison & Lewis, P.C.
Frisco Building
502 West Sixth Street
Tulsa, OK 74119-1010

JLou Properties, LLC
c/o Bart A. Boren
Williams, Boren & Associates, P.C.
Attorneys
401 N. Hudson Ave., STE 200
Oklahoma City, OK 73102
Bboren1@cox.net
Jeanmarie Baer
Perdue, Brandon, Fielder, Collins & Mott LLP
PO Box 8188
Wichita Falls, TX 76307
jbaer@pbfcm.com

Tara LeDay
McCreary, Veselka, Bragg & Allen, PC
PO Box 1269
Round Rock, TX 78680
tleday@mvalaw.com

Jonathan T. Edwards
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309
Jonathan.edwards@alston.com

Laura J. Monroe
Perdue, Brandon, Fielder, Collins & Mott LLP
PO Box 817
Lubbock, TX 79408
lmbkr@pbfcm.com

Karen Carden Walsh
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
502 West 6th Street
Tulsa, OK 74119-1016
kwalsh@riggsabney.com

Edward M. King
Frost Brown Todd LLC
400 W. Market Street, 32nd Floor
Louisville, KY 40202
tking@fbtlaw.com

John Mark Stern
Assistant Attorney General
Bankruptcy & Collections Division MC 008
PO Box 12548
Austin, TX 78711-2548
Bk-jstern@oag.texas.gov

Marc W. Taubenfeld
McGuire, Craddock & Strother, P.C.
2501 N. Harwood, Suite 1800
Dallas, TX 75201
mtaubenfeld@mcsllaw.com

Don Stecker
Linebarger Goggan Blair & Sampson, LLP
711 Navarro Street, Ste 300
San Antonio, TX 78205
Sanantonio.bankruptcy@publicans.com

Elizabeth Weller
Linebarger Goggan Blair & Sampson, LLP
2777 N. Stemmons Freeway
Suite 1000
Dallas, TX 75207
Dallas.bankruptcy@publicans.com

Tammy Jones, Pro Se
Oklahoma County Treasurer
320 Robert S. Kerr, Room 307
Oklahoma City, OK 73102
Tammy.jones@oklahomacounty.org

Jameson J. Watts
Husch Blackwell LLP
111 Congress Avenue, Suite 1400
Austin, TX 78701
Jameson.watts@huschblackwell.com

Lynn J. Butler
Husch Blackwell LLP
111 Congress Avenue, Suite 1400
Austin, TX 78701
Lynn.butler@huschblackwell.com

Vancouver Land Law Corp.
c/o Cassie N. Crawford
PO Box 61488
Vancouver, WA 98666
cassie@vancouverlandlaw.com

Jeff Resnick
Jeffrey B. Resnick, P.C.
6440 North Central Expwy., #501
Dallas, TX 75206
jresnick@jresnicklaw.com

John D. Elrod
Greenberg Traurig, LLP
Terminus 200 – Suite 2500
3333 Liedmont Road, NE
Atlanta, GA 30305
elrodj@gtlaw.com

Mark A. Platt
Frost Brown Todd LLC
100 Crescent Court, Suite 350
Dallas, TX 75201

Michael Hilsabeck
907 South Detroit Ave
Suite 1100
Tulsa, OK 74120

Internal Revenue Service
Centralized Insolvency Operation
P.O. Box 7346
Philadelphia, PA 19101-7346

Patrick H. Autry
Branscomb PLLC
8023 Vantage Drive
Suite 560
San Antonio, TX 78230
pautry@branscomblaw.com

Hockley County Tax Office
Lubbock Central Appraisal District
Midland County
c/o Laura J. Monroe
Perdue, Brandon, Fielder, Collins & Mott,
L.L.P.
P.O. Box 817
Lubbock, TX 79408

Jason M. Rudd
J. Robertson Clarke
Wick Phillips Gould & Martin, LLP
3131 McKinney Ave., STE 100
Dallas, TX 75204
Jason.rudd@wickphillips.com
Robbie.clarke@wickphillips.com

Law Offices of Dana A. Ehrlich
Dana A. Ehrlich
P. O. Box 1831
San Angelo, Texas 76902
dana@wcc.net

Stephen W. Sather
Barron & Newburger, P.C.
7320 N. Mopac Expy., Ste. 400
Austin, TX 78731
ssather@bn-lawyers.com

JLOU Properties, LLC
c/o Bart A. Boren
Williams Boren & Associates, P.C.
401 N Hudson Ave, Suite 200
Oklahoma City, OK 73102
Bboren1@cox.net

Sean B. Davis
WINSTEAD PC
600 Travis Street, Suite 5200
Houston, TX 77002
sbdavis@winstead.com